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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/160,618	09/24/98	CHRISTENSEN	E 73690
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HM12/1124

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EXAMINER

WARE, T

ART UNIT

PAPER NUMBER

1615

DATE MAILED:

11/24/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/160,618

Applicant(s)

CHRISTENSEN, EDWIN H.

Examiner

Todd D Ware

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1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 January 1999.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

**Attachment(s)**

- 14) ☒ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 17) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other:

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### **DETAILED ACTION**

Receipt is acknowledged of preliminary amendment filed 9/24/98 and information disclosure statement filed 1/19/99. Claims 13-23 have been amended to depend from claim 12. Claims 1-23 are pending.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 5 and 17 recite the limitation "pregelatinized starch" in line 1 of each claim. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-8, 10-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Christensen (4,284,652; hereafter '652).

'652 discloses a matrix comprising starch, fat, polyhydric alcohol and water and may also comprise salt, sugar, and vitamins or minerals or amino acids (by means of meat protein source) and that this matrix has a water activity of about 0.60 to about 0.75 (abstract; column 7, lines 55-68; examples 8 and 10). Since the specification discloses that the amino acid methionine is a nutraceutical, it is believed by the examiner that the matrix of '652 would also act as a carrier for nutraceuticals, since it is believed by the examiner that the meat protein source of '652 would contain the amino acid methionine. '652 also discloses a method for making this matrix.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-8, 10-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen (4,284,652; hereafter '652).

'652 teaches a matrix comprising starch, fat, polyhydric alcohol and water and may also comprise salt, sugar, and vitamins or minerals or amino acids (by means of meat protein source) and that this matrix has a water activity of about 0.60 to about 0.75 (abstract; column 7, lines 55-

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68; examples 8 and 10). Since the specification discloses that the amino acid methionine is a nutraceutical, it is believed by the examiner that the matrix of '652 would also act as a carrier for nutraceuticals, since it is believed by the examiner that the meat protein source of '652 would contain the amino acid methionine. '652 also discloses a method for making this matrix.

8. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen (4,284,652; hereafter '652) in view of Alphin et al (4,025,624; hereafter '624).

'652 teaches a matrix comprising starch, fat, polyhydric alcohol and water and may also comprise salt, sugar, and vitamins or minerals or amino acids (by means of meat protein source) and that this matrix has a water activity of about 0.60 to about 0.75 (abstract; column 7, lines 55-68; examples 8 and 10). Since the specification discloses that the amino acid methionine is a nutraceutical, it is believed by the examiner that the matrix of '652 would also act as a carrier for nutraceuticals, since it is believed by the examiner that the meat protein source of '652 would contain the amino acid methionine. '652 also discloses a method for making this matrix. '652 does not teach the inclusion of aspirin in the matrix taught.

'624 is relied upon for teaching that it is well known in the art to mix aspirin in food (column 8, lines 60-64) in an effort to achieve compliance in the administration of aspirin for analgesia or fever.

Accordingly, it would have been within the gambit of one skilled in the art at the time of the invention to administer aspirin in the food matrix of '652 with reasonable expectation that

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doing so would mask the taste of the aspirin increase the likelihood that administration of the aspirin would be successful.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-8, 10-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of U.S. Patent No. 4,284,652. Although the conflicting claims are not identical, they are not patentably distinct from each other because the recitation of "a carrier... of an active ingredient" of the instant claims does not patentably distinguish the instant claims from '652, since such recitation is merely an intended use and does not lend patentable weight to composition/method of making claims.


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*Conclusion*

11. Currently, no claim is allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd Ware whose telephone number is (703) 305-1700. The examiner can normally be reached on Monday through Friday from 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235 or 308-1234.

  
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SUPERVISORY PATENT EXAMINER  
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11/19/99